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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF OREGON  
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11 **MONTE SCOTT**, a resident of the State )  
of Oregon, )

12 )  
13 Plaintiff, )

14 v. )

15 **AMERICAN UNITED LIFE** )  
16 **INSURANCE COMPANY**, an Indiana )  
corporation, )

17 Defendant. )  
\_\_\_\_\_ )

Civil No. 05-1215-AS

**OPINION AND ORDER**

18 ASHMANSKAS, Magistrate Judge:

19 The matter presently before the court is the motion of Defendant American United Life  
20 Insurance Company ("American"), to strike Plaintiff Monte Scott's First Cause of Action (Failure  
21 to Pay Minimum Wage, 29 U.S.C. § 206) and Second Cause of Action (Failure to Pay Minimum  
22 Wage, ORS 653.025). In the alternative, American requests the court to order Mr. Scott to make  
23 these claims more definite and certain. For the reasons set forth below, the court DENIES the  
24 defendant's motion to strike the plaintiff's first two causes of action, and DENIES the defendant's  
25 request to order the plaintiff to make these claims more definite and certain.

26 BACKGROUND

27 Mr. Scott was employed by American from April until November 2003. Mr. Scott's

1 complaint alleges that American never paid Mr. Scott for work he performed from October 16, 2003,  
2 through November 13, 2003. The complaint alleges three causes of action against American: (1)  
3 failure to pay wages in violation of the Fair Labor Standards Act (29 U.S.C. § 206); (2) failure to  
4 pay wages in violation of ORS 653.025; and (3) failure to pay wages upon termination (ORS  
5 652.150).

## 6 LEGAL STANDARDS

### 7 **Motion to Strike**

8 Under F.R.C.P. 12(f), the court may strike from any pleading "any insufficient defense or  
9 any redundant, immaterial, impertinent, or scandalous matter." See also Lazar v. Trans Union LLC,  
10 195 F.R.D. 665 (2000).

### 11 **Motion to Make More Definite**

12 Under F.R.C.P. 12(e), when a pleading is "so vague or ambiguous that a party cannot  
13 reasonably be required to frame a responsive pleading, the party may move for a more definite  
14 statement. A motion to make more definite is only appropriate when the complaint is "so indefinite  
15 that the defendant cannot ascertain the nature of the claim asserted." Cellars v. Pacific Coast  
16 Packaging, Inc., 189 F.R.D. 575, 578 (N.D. Ca. 1999).

## 17 DISCUSSION

18 Mr. Scott's complaint alleges that American "never paid Scott the wages he earned, including  
19 commissions, and accrued vacation." The complaint alleges violations of the Fair Labor and  
20 Standards Act (FLSA) and ORS 653.025. The FLSA requires every employer to pay each of its  
21 employees "who in any workweek engaged in commerce or in the production of goods for  
22 commerce" a minimum wage of \$5.15 per hour. 29 U.S.C. § 206(a)(1). Under Oregon law, an  
23 employer is required to pay an employee for each hour of work time that the employee was gainfully  
24 employed at wages computed at a rate no lower than \$6.90 an hour. ORS 653.025. American's  
25 motion to strike argues that alleging failure to pay a final paycheck is not sufficient to raise  
26 minimum wage claims under the FLSA and ORS 653.025. American alternatively requests that  
27 these claims be made more definite and certain.

American relies on Hurger v. Hyatt Lake Resort, Inc., to support its motion to strike. 170 Or. App. 320, 13 Pd.2d 123 (2000), rev. den. 331 Or. 583, 19 P.3d 355 (2001). In Hurger, the defendant had paid the plaintiff wages that satisfied ORS 653.025 within two weeks of the plaintiff's termination. Id. at 326. The court did not agree with the plaintiff's contention that a payment that is late for the purposes of ORS 652.140 (requiring full payment on the date of termination) is also necessarily deficient for the purposes of the State minimum wage law. Id. American argues that this reasoning applies to Mr. Scott's Federal and Oregon minimum wage claims and, therefore, Mr. Scott's claims should be stricken for attempting to create three remedies for the same alleged wrong through insufficient reasoning and redundancy. Lazar v. Trans Union LLC, 195 F.R.D. 665, 669 (2000).

However, in Pascoe v. Mentor Graphics Corp., Magistrate Judge Stewart applied Hurger and found that the defendant violated the FLSA and Oregon minimum wage provisions by not paying the plaintiff on his regular payday, even though the plaintiff eventually received payment of wages that exceeded the minimum wage. 199 F.Supp.2d 1034 (D. Or. 2001). Pascoe applied the reasoning used by the Ninth Circuit in Biggs v. Wilson, 1 F.3d 1537 (9<sup>th</sup> Cir. 1993), cert denied, 510 U.S. 1081, 114 S.Ct. 902, 127 L.Ed.2d 94 (1994), which Hurger did not address. 199 F.Supp.2d at 1061-1062. Biggs held that wages are considered unpaid, and a minimum wage not received under the FLSA, if wages are not paid on the employee's regular payday. 1 F.3d at 1539-1540. The court in Hurger found it unnecessary to address Biggs since the court's decision "would be adverse to plaintiffs even if we found Biggs to be apposite and its holding correct" given that the plaintiffs made no contention that they were not paid by their regular payday. 170 Or. App. at 328. In Pascoe, the court found that Hurger limited its holding to the situation where the employee's minimum wage claim is premised solely on a violation of ORS 652.140, and differentiated it from a situation in which a plaintiff is not paid by his regular payday. 199 F.Supp 2d. at 1063. Therefore, Pascoe concluded that the FLSA and Oregon minimum wage provisions are violated if the minimum wage is not paid by the employee's next regular payday. Id. at 1062.

In the interest of consistency, this court will defer to the interpretation of Hurger set forth

1 by Judge Stewart in Pascoe. This interpretation does not support the defendant's motion to strike  
2 based on alleged redundancy of claims. Moreover, these claims are not so vague as to prevent the  
3 defendant from ascertaining their nature; therefore, it would not be proper for this court to grant the  
4 defendant's request to make the plaintiff's claims more definite and certain.

5 Conclusion

6 The defendant's motion to strike (#5) is DENIED. The defendant's alternative request that  
7 the court grant its motion to make the plaintiff's claims more definite and certain is also DENIED.  
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10 DATED this 19<sup>th</sup> day of October, 2005.

11  
12 /s/ Donald C. Ashmanskas  
13 DONALD C. ASHMANSKAS  
14 United States Magistrate Judge  
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